

SERVICE DATE – MAY 12, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 314 (Sub-No. 7X)

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN POTTAWATTAMIE COUNTY, IOWA, AND DOUGLAS COUNTY,
NEB.

Digest:¹ This decision allows Chicago, Central & Pacific Railroad Company to end its common carrier obligation to provide freight rail service over approximately 2.56 miles of rail line across and adjacent to the Missouri River in Iowa and Nebraska.

Decided: May 11, 2015

By petition filed on January 22, 2015, Chicago, Central & Pacific Railroad Company (CC&P) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 2.56 miles of interconnected track across and adjacent to the Missouri River in Iowa and Nebraska (the Missouri River Bridge Line or Line). The Line consists of: (1) approximately 2.12 miles of rail line extending from milepost 510.62 in Council Bluffs, Pottawattamie County, Iowa, across the Missouri River to milepost 514.80 near North 25th Street E in Omaha, Douglas County, Neb.,² and (2) the south leg of its wye track at Council Bluffs, extending from milepost 511.17 on CC&P's main line near Avenue K to the connection with the first line segment at North 16th Street, an additional distance of approximately 0.44 miles. Notice of the exemption was served and published in the Federal Register on February 11, 2015 (80 Fed. Reg. 7682).³

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² According to CC&P, the Line includes a milepost equation (adjustment), which accounts for what might otherwise be perceived as a mileage discrepancy based on calculations applying the terminal milepost numbers.

³ This notice inadvertently contained an incorrect milepost number. The Board issued a correction in the Federal Register on May 8, 2015 (80 Fed. Reg. 26,618).

BACKGROUND

According to CC&P, most of the Missouri River Bridge Line is part of CC&P's original main line, which extends from Chicago, Ill., to Omaha. CC&P states that, although most of its original main line is active, it has not used the Missouri River Bridge Line segment for the provision of rail common carrier service for over 20 years.⁴ Consequently, there are no shippers on the Line.

The Missouri River Bridge Line includes the Missouri River Bridge (the Bridge), a substantial two-span swing or draw bridge that crosses the Missouri River. According to CC&P, the Missouri River Bridge has been inactive for many years and its eastern (Iowa side) span has been locked in an open position to better accommodate river navigation.

CC&P indicates that overhead traffic on the Line is handled via a long-standing switching arrangement with the Union Pacific Railroad Company (UP). In the unlikely event that the switching arrangement were to terminate, CC&P believes that it would continue to be able to serve customers in Omaha under an interline arrangement with UP or another carrier.

Citing the many years of bridge inactivity and the absence of shippers along the Line, the U.S. Coast Guard is requiring that the Bridge be removed, characterizing it as a navigation hazard. CC&P believes that the Bridge may not be removed unless the railroad has received authority to abandon the Line. CC&P, therefore, requests that the Board authorize abandonment of the Line in this proceeding.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of CC&P's abandonment proposal under 49 U.S.C. § 10903 is not necessary in this case to carry out the rail transportation policy. The Line is no longer needed for rail service, as shown by the absence of common carrier rail traffic over the Line for more than 20 years. By minimizing the administrative expense of the abandonment application process, an exemption would minimize the need for Federal regulatory control over the rail transportation

⁴ CC&P states that, in recent years, it has used the wye trackage portion of the Line in Council Bluffs for turning locomotives and equipment, but not for the provision of rail common carrier service.

system, expedite regulatory decisions, and reduce regulatory barriers to exit, in accordance with 49 U.S.C. § 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary common carrier rail line, consistent with 49 U.S.C. § 10101(5) and (9). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because there are no active shippers on the Line and no freight traffic has moved over the Line in over 20 years.⁵ No shipper or other party has filed in opposition to the proposed abandonment.

Employee protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental Review. CC&P has submitted a combined environmental and historic report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R §§ 1105.7, 1105.8, and 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) in this proceeding on March 23, 2015, recommending that the Board impose five conditions on any decision granting abandonment authority in order to comply with the National Environmental Policy Act, related environmental laws, and the National Historic Preservation Act. OEA developed the conditions in response to requests made by certain agencies, including the Environmental Protection Agency, the United States Fish and Wildlife Service, the Iowa Department of Natural Resources, the National Geodetic Survey, and the Iowa and Nebraska State Historic Preservation Offices.

Comments on the EA were due by April 22, 2015. None were filed. The Board accordingly adopts OEA's recommended conditions with slight modifications as provided in the Appendix. The Board finds that the proposed abandonment, if implemented in accordance with the conditions in the Appendix, would not significantly affect either the quality of the human environment or conservation of energy resources.

⁵ Given the market power finding here, the Board need not determine whether the proposed abandonment is limited in scope.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by CC&P of the Line, subject to the employee protective conditions set forth in Oregon Short Line.
2. This abandonment authorization is also subject to the environmental conditions listed in the Appendix.
3. An OFA under 49 U.S.C. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by May 22, 2015, subject to the time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,600. See 49 C.F.R. § 1002.2(f)(25).
4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**
5. Provided no OFA has been received, this exemption will be effective on June 11, 2015. Petitions to stay must be filed by May 22, 2015. Petitions to reopen must be filed by June 1, 2015.
6. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), CC&P shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CC&P’s filing of a notice of consummation by May 12, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

APPENDIX
ENVIRONMENTAL CONDITIONS

1. Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. § 1535), CC&P shall consult with OEA and the U.S. Fish and Wildlife Service in order to develop appropriate mitigation measures, if necessary. CC&P may not file its consummation notice or initiate any salvage activities (including removal of tracks and ties) until the Section 7 consultation process is complete and the Board has removed this condition.
2. Prior to conducting any salvage activities, CC&P shall consult with the Environmental Protection Agency Region 7 to address its concerns regarding the treatment of invasive plant species that may be identified in the project area.
3. CC&P shall consult with the Iowa Department of Natural Resources regarding the need for a sovereign lands permit and comply with the reasonable requirements of such a permit, should CC&P receive the necessary Federal permits to remove the Missouri River Bridge.
4. CC&P shall consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
5. CC&P shall retain its interest in and take no steps to alter the historic integrity of all historic properties on the Missouri River Bridge Line including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. CC&P shall report back to OEA regarding any consultations with State Historic Preservation Offices and the public. CC&P may not file its consummation notice or initiate any salvage activities (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.